IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

RODNEY HERMAN SWAIN,	)	Cause No. CV 05-57-BLG-RWA
	)	
Plaintiff,	)	
	)	
vs.	)	FINDINGS AND RECOMMENDATION
	)	OF U.S. MAGISTRATE JUDGE
DR. SKELTON and NURSE KYDLAND,	)	
	)	
Defendants.	)	
	)	

On April 1, 2005, Plaintiff Rodney Swain applied to proceed *in forma pauperis* with this action under 42 U.S.C. § 1983. Swain is a state prisoner proceeding *pro se*.

On September 30, 2005, the Court ordered Swain to submit a copy of his inmate trust account statement. Swain was informed

that his failure to do so would result in a recommendation that his Motion to Proceed *In Forma Pauperis* would be denied. He was also informed that, if his motion were granted, he would be obligated to pay the full $250.00 filing fee, though he would be permitted to pay it in installments rather than in a lump sum. *See* Order (doc. 3) at 2, 3.

Although the Order was not returned to the Court as undeliverable mail, Swain failed to respond to it. The Court concludes that he does not wish to pursue the action at this time and that his Motion to Proceed *In Forma Pauperis* does not comply with 28 U.S.C. § 1915(a)(2).

Pursuant to *Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam), Swain is not entitled to a ten-day period to object to the Findings and Recommendation.

RECOMMENDATION

Based on the foregoing, the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(3), **RECOMMENDS** that Swain's Motion to Proceed *In Forma Pauperis* (doc. 2) be DENIED and the Complaint be DISMISSED WITHOUT PREJUDICE for failure to pay the filing fee or properly apply to proceed *in forma pauperis*.

The Clerk of Court shall immediately forward the Findings and Recommendation to United States District Judge Richard F. Cebull for his review.

Swain must immediately inform the Court of any change in his

address while this case remains pending.

DATED this _8th__ day of November, 2005.

/s/ Richard W. Anderson_____
Richard W. Anderson
United States Magistrate Judge